

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 542**

By Senator Barrett

[Introduced January 24, 2024; referred  
to the Committee on Government Organization]

1 A BILL to amend and reenact §3-10-7 of the Code of West Virginia, 1931, as amended, relating to  
2 amending the procedure for filling a vacancy in offices of county commissioners having  
3 more than three commissioners.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 10. FILLING VACANCIES.**

**§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.**

1 (a) Any vacancy in the office of county commissioner or clerk of county commission shall  
2 be filled by appointment by the county commission. The appointee must reside in a magisterial  
3 district in which no other member of the county commission resides, and be a person of the same  
4 political party with which the person holding the office immediately preceding the vacancy was  
5 affiliated at the time the vacancy occurred: *Provided*, That at the time of appointment, the  
6 appointee must have been a member of that political party for at least 60 days prior to the  
7 occurrence of the vacancy.

8 (b) If a quorum of the county commission fails to make an appointment within 30 days, the  
9 county executive committee of the same political party with which the person holding the office  
10 preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three  
11 legally qualified persons to fill the vacancy for a county having three elected commissioners, or  
12 shall submit a list of five legally qualified persons to fill the vacancy for a county having five elected  
13 commissioners or councilors. Within 15 days from the date on which the list is received, the county  
14 commission or council shall appoint a candidate from the list to fill the vacancy.

15 (1) In a county having three elected county commissioners, if the county commission fails  
16 to make the appointment within the specified time, then the county commissioner with the longest  
17 tenure shall eliminate one name from the submitted list, followed by the county commissioner with  
18 the second-longest tenure then eliminating one name from the submitted list. The name remaining  
19 after those two names have been eliminated shall be deemed to be appointed by the county  
20 commission to fill the vacancy.

21 (2) In a county having five elected county commissioners or councilors, if the county  
22 commission or council fails to make the appointment within the specified time, then the county  
23 commissioner or council shall strike one name from the list, in turn, in the following order of  
24 precedence:

25 (A) First, all county commissioners or councilors affiliated with the same political party as  
26 the vacating member shall strike a name from the list before those not affiliated with the vacating  
27 member's party;

28 (B) Second, of the county commissioners or councilors affiliated with the same party, the  
29 commissioner or councilor with the longest tenure shall strike before those with lesser tenure; and

30 (C) Third, of the county commissioners or councilors with equal tenure, a drawing by lot  
31 shall be conducted within the timeframe required to fill the vacancy to determine which shall  
32 eliminate one name from the submitted list before the other commissioner or councilor with equal  
33 tenure.

34 (3) After the county commissioners or councilors affiliated with the same political party as  
35 the vacating member make their strikes, the remaining county commissioners or councilors shall  
36 follow the same procedure and order of precedence provided herein. The name remaining after  
37 four names have been eliminated shall be deemed to be appointed by the county commission or  
38 council.

39 (c) If the number of vacancies in a county commission deprives that body of a quorum, the  
40 Governor shall make an appointment to fill any vacancy in the county commission necessary to  
41 create a quorum, from a list of three legally qualified persons submitted by the party executive  
42 committee of the same political party with which the person holding the office immediately  
43 preceding the vacancy was affiliated at the time the vacancy occurred. The Governor shall make  
44 any appointments necessary, beginning with the vacancy first created, to create a quorum in  
45 accordance with the same procedures applicable to county commissions under §3-10-7(a) of this  
46 code. Once a quorum of the county commission is reestablished by gubernatorial appointment,

47 the authority to fill the remaining vacancies shall be filled in the manner prescribed in §3-10-7(a) of  
48 this code.

49 (d) An appointment made pursuant to this section is for the period of time provided in §3-  
50 10-1 of this code.

51 (e) Notwithstanding any code provision to the contrary, a county commission may appoint  
52 a temporary successor to the office of clerk of the county commission until the requirements of this  
53 section have been met. The temporary successor may serve no more than 30 days from the date  
54 of the vacancy.

55 (f) If an election is necessary under §3-10-1 of this code, the county commission, or the  
56 president thereof in vacation, shall be responsible for the proper proclamation, by order, and notice  
57 required by §3-10-1 of this code.

58 (g) §3-10-1 of this code shall be followed with respect to any election needed to fill a  
59 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the  
60 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive  
61 committee in the manner provided in §3-5-19 of this code, as in the case of filling vacancies in  
62 nominations, and the names of the persons, so nominated and certified to the clerk of the county  
63 commission of the county, shall be placed upon the ballot to be voted at the next general election.

64 (h) If the election for an unexpired term is held at the same time as the election for a full  
65 term for county commissioner, the full term shall be counted first and the unexpired term shall be  
66 counted second. If the candidate with the highest number of votes for the unexpired term resides  
67 in the same magisterial district as the candidate with the highest number of votes for the full term,  
68 the candidate for the full term shall be seated. The candidate with the next highest number of votes  
69 for the unexpired term residing in a different magisterial district shall be seated for the unexpired  
70 term.

NOTE: The purpose of this bill is to amend the procedure for filling a vacancy on in offices of

county commissioners having more than three commissioners.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.